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**“WITNESS PROTECTION SCHEME, 2018: A
CRITICAL ANALYSIS OF ITS ROLE IN
SAFEGUARDING WOMEN IN INDIA”**

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ABBREVIATIONS

- HC : High Court
- SC : Supreme Court
- WPS : Witness Protection Scheme
- BNS: Bharatiya Nyaya Sanhita, 2023
- BNSS : Bharatiya Nagarik Suraksha Sanhita, 2023
- BSA: Bharatiya Sakshya Adhiniyam, 2023
- COI : Constitution of India
- Art: Article
- V.: Versus
- AIR : All India Report
- UOI: Union of India

ABSTRACT

Witness protection is a very important aspect of a criminal justice system. In India, women witnesses are facing a lot of threats of coercion and intimidation. This Witness Protection Scheme of 2018, which was established through judicial intervention, has been a very important move towards providing witnesses in India with a sense of security. The objective of this paper is to evaluate the Witness Protection Scheme of 2018 from a gender perspective. Additionally, the paper will evaluate the constitutional basis of the Witness Protection Scheme of 2018, the judicial evolution of witness protection in India, and the problems of implementation. This paper will also evaluate case law and recent judicial interventions in Witness Protection Schemes of 2024-2026, which will reflect a sense of deficiency in terms of enforcement and structural integrity. This paper will conclude that even though the Witness Protection Scheme of 2018 has been a very progressive move, it still does not offer sufficient security to women witnesses due to their vulnerabilities.

1. INTRODUCTION:

In the criminal justice system, a witness is an important evidence used by the court to help determine whether or not a defendant is guilty of a crime. In many cases, a witness's testimony is the basis for the entire prosecution's case against the defendant. If the court is unable to depend upon the testimony of a witness, it is unable to establish the facts of the case or make a fair verdict. Unfortunately, this is not the case in India. The existing system for protecting witnesses is not effective, with many witnesses feeling that they are being threatened or intimidated by the accused in testifying against him.

In many cases, the witnesses do not get the right support from law enforcement or other government agencies in testifying against the accused. As a result, many witnesses may hesitate to testify or give false testimony because of fear of the accused or his accomplices. As a result, the criminal justice delivery system in India is compromised. The problem of intimidation and fear of giving testimony is further compounded if the witness is a woman. Women witnesses face an added threat of intimidation because of the societal pressures that act upon women not to testify or talk about the crime.

The women witnesses also suffer from stigmatization, victim-blaming, and emotional trauma as a result of testifying in cases where the crime is as heinous as rape, domestic violence, human

trafficking, or honour crimes.

As a result, women witnesses may feel pressured by their communities or families not to testify or to lie on the stand. As a result of the above-mentioned pressure, women witnesses end up changing their testimony (i.e., turning hostile) and/or recanting their testimony in court not because they are lying but because they feel that they are not being protected. In order to overcome the above-mentioned problems, the WPS 2018 has been introduced as a measure of providing protection and security to the women witnesses by providing an enabling environment where the women can freely testify without the threat of retaliation or harm. The measures include identity protection, police security, and relocation, among others. There is a question of the effectiveness of the WPS 2018 in providing protection for the women witnesses because the general application of the WPS does not sufficiently address the problems facing women in general. This paper examines the role of the WPS 2018 in providing protection for women witnesses in India, and whether or not the WPS 2018 is in need of reform to achieve an equitable and gender-sensitive protection.

2. CONSTITUTIONAL FOUNDATIONS AND GENDER JUSTICE

Indian Constitution

Indian Constitution is based on the concept of witness protection through the provisions of “Art 21” which grants the right to life and liberty to citizens; however, the judiciary has widened the scope of “Art 21¹” to also comprise “**the right to live with dignity**,” “the right to have a fair trial,” “the right to protection from all forms of harm or harassment.” Thus, in this context, it can be stated that witness protection is a significant aspect in order to have justice.

It is stated by SC that “**the heart of a fair trial is the principle that same opportunities are available to both defendant and State.**”

It can be clearly seen from the principles framed in the above two case law instances that the importance of witness protection is significant in order to have a fair trial; however, in the absence of witness protection, having a fair trial is meaningless.

The SC has also acknowledged that the legal system in India must, to the extent possible,

¹ The Constitution of India, 1950

provide a supportive system for women who are victims of sexual assault by men and must make efforts to ensure women receive support, compensation, and protection from further victimization during trial proceedings, as was acknowledged in the case of **Delhi Domestic Working Women's Forum v. UOI**.² The SC also acknowledged that women not only suffer physical damage as a result of sexual assault-related offenses but also suffer social and emotional damage. In the case of **Bodhisattwa Gautam v. Subhra Chakraborty**,³ the Supreme Court acknowledged that rape is a criminal offense that not only violates criminal law but also violates a victim's fundamental rights under Art 21 of the COI. The SC stated in their ruling:

“Rape is a crime that violates basic human rights, and as such constitutes a violation of the victim's greatest and most FRs, which is the right to live with dignity.” The implications of this ruling are that not only must the perpetrator of rape be punished by the legal system, but also the victim and witness of rape must be protected from further victimization. The above principles are equally applicable to women witnesses. Women witnesses often suffer the same danger of victimization, shame, and trauma as do the victims..

Witness protection is necessary and was established in the Witness Protection Scheme, 2018 on a national level by the Supreme Court in the landmark case of **Mahinder Chawla v. Union of India**.⁴ The Supreme Court stated as follows: “The right of witnesses to testify free from fear or threat is, among other things, a fundamental right and necessary for the proper functioning of due process under Art 21.”

The SC held that the Witness Protection Scheme is a legally recognized document, and that witness protection is required by the Constitution and not just a matter of policy.

3. JUDICIAL EVOLUTION OF WITNESS PROTECTION:

The role of courts has been significant in shaping the concept of witness protection, though there is no law on witness protection. The courts have held that unless there is proper protection for witnesses, justice cannot be done.

² 1995 1 SCC 14

³ 1996 1SCC 490

⁴ 2018 16 SCC 299

In **Zahira Habibullah Sheikh v. State of Gujarat**⁵, the witnesses went back on their testimony due to pressure from others. The SC has held that when witnesses are under pressure or are coerced, they would be hesitant to give their true testimony, which would be inferior evidence, leading to a decision that could be unjust, as pronounced by a trial judge.

In another landmark judgment, the Supreme Court has decided on the honor, dignity, and right to live a dignified life for female rape victims for a period prior to, during, and after the criminal trial against them, as pronounced in **State of Punjab v. Gurmit Singh**.⁶

The court has found several solutions to ease the intimidation of witnesses. In **Sakshi v. UOI**⁷, for example, the judicial branch has found solutions to ease the court procedures, which would minimize the pressure on women witnesses. In this case, the courts have found alternative means of obtaining a witness's testimony, which has increased security for female witnesses during their deposition.

The court has found that witnesses have experienced intimidation, threats, and harassment, all in an attempt to dissuade them from testifying or testifying truthfully. In **Swaran Singh v. State of Punjab**,⁸ for example, the court found that witnesses are not only victims of such intimidation, threats, and harassment, but they are also a deterrent to other witnesses in the judicial system, which weakens them. All these cases indicate that the judiciary is aware of what witnesses are going through, how they are behaving, and is creating a secure environment for witnesses through their decisions, pre-regulation

4. WITNESS PROTECTION SCHEME, 2018: STRUCTURE AND SCOPE:

The WPS was established in order to ensure the safety and security of witnesses, which will enable them to give their evidence in court without any fear or pressure; thereby adding value to the criminal justice system in Kenya by ensuring that witnesses will be willing to give their testimony under oath in order to give honest and truthful testimony in their respective cases.

The witness protection scheme has several measures in place in order to ensure the security of witnesses. For example, under the scheme, witnesses' identities can be protected, police

⁵ 2004 4 SCC 158

⁶ 1996 2 SCC 384

⁷ 2004 5 SCC 518

⁸ 2000 5 SCC 688

protection of witnesses, and in cases where witnesses are in grave danger, witnesses can be relocated outside of the area where they gave their evidence or even change their identities. Additionally, in-camera hearing can be conducted under the scheme in situations where parts of a case are to be heard out of the view of the general public. This will be in situations where witnesses' dignity will be compromised if they are to give their evidence in an open court, especially in sexual offenses.

First, as a general framework, the witness protection scheme does not address women witnesses' issues. For example, the social stigma of being a female victim of a crime, pressures from their families, emotional distress, and financial dependence of women witnesses are not clearly defined under the witness protection scheme. These factors are not normally considered when making recommendations regarding witness protection. For example, a female victim of domestic violence may not want to be relocated since she will not be able to support herself financially without support from her family. In addition, she may be pressured by her family not to give testimony.

The Witness Protection Scheme, 2018, is a very important legislative framework in protecting witnesses. However, in terms of protecting women witnesses, the effectiveness of the witness protection scheme in Kenya is very poor since it does not consider women witnesses' issues. In order for women witnesses to benefit from the provisions of the Witness Protection Scheme, 2018, it has to be very sensitive to women witnesses' issues.

5. RECENT JUDICIAL DEVELOPMENTS:

Over the past few years, the Indian judiciary has been more concerned with the issue of protecting witnesses, particularly women, and although there are a few positive steps taken towards this end, there are a lot of loopholes in this regard. Events over the past few years, highlight this issue, as shown below.

5.1. Supreme Court on Limits of Witness Protection; 2025: SC has recently observed, "Although the WPS exists, this program is not intended to replace the need for bail to be cancelled. WPS will only work when the witness has been identified as being under a threat (i.e., when an FIR has been filed), whereas the accused are granted bail so that they can be restricted from abusing or misusing it."

5.2. Concerns About Poor Enforcement of BNSS: The Indian judiciary has expressed extreme concern regarding the poor enforcement of the BNSS⁹ with regard to the issue of protecting witnesses, 2023. SC, in various recent hearings, asked multiple state governments regarding the failure to either structure or enforce the witness protection protocols. Thus, this highlights the need for laws to exist; however, even when they do, the enforcement of these laws or rules is not effective.

5.3. Need for Speedy Trials for Sexual Offences: It has been repeatedly emphasized by the courts that the trial for criminal acts of sexual nature, for example, sexual assault, etc., needs to be expedited. There is a significant amount of stress, societal pressure, as well as intimidation of the woman witness, which arises when the trial is delayed. In cases like the **State of Punjab v. Gurmit Singh**,¹⁰ although the case is older, the courts have recently reiterated the importance of handling cases involving women with sensitivity.

5.4. Use of Technology for Safer Testimony: Another significant change is the increased use of technology during the trial. The courts are now using:

- Video conferencing
- Online recording of statements
- Remote testimony

These changes will enable the woman witnesses to avoid direct confrontation with the accused, which will reduce the amount of fear.

Recently, in various cases in the HC courts (2024-2025), the courts have allowed the rape victim to testify via video conferencing.

5.5. Protection of Identity and Privacy of Women: The courts have emphasized the importance of the woman witness's identity remaining confidential, especially in sexual offence cases.

This principle has been consistently followed since **Nipun Saxena v. Union of India**¹¹, and recent courts have continued to strictly apply it.

Maintaining anonymity helps protect women from social stigma and encourages them to come forward without fear.

⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023

¹⁰ 1996 AIR 1393

¹¹ 2019 2 SCC 703

5.6 Latest Legal Developments and Ground Reality: The latest news from India's legal circle, i.e., court observations during 2025-2026, reveals that:

- Witness intimidation is still a big problem
- Courts are demanding stronger protection mechanisms
- Some states are slowly improving their systems

However, this is not a general scenario all over India. In most areas, witnesses are still not provided with proper protection due to a lack of awareness, resources, or support from local authorities.

5.7 Critical Observation: In spite of all these efforts from the judiciary to improve the protection of witnesses, there is still a lot of room for improvement. There is no such protection mechanism available for witnesses unless they are taken care of by the court.

Legal provisions for women in India are available, but they are still associated with a high degree of uncertainty, which leads to a general lack of faith in such a system. There are three aspects that determine a woman's safety in India:

- How serious is the crime?
- What is the attitude of the judge?
- How responsive is the local authority?

So, women may not feel safe under such a system.

6. GROUND REALITY: WOMEN WITNESSES IN INDIA:

Despite the existence of a witness protection system, women witnesses are still facing extreme difficulties in having their needs met. Women are not fully able to utilize the witness protection system due to cultural, social, and economic factors.

6.1. Threats and Intimidation by the Accused: Women witnesses are intimidated by the accused, as well as faced with threats to coerce or intimidate them to change their statement or to refuse to make a statement or to cooperate with the investigation.

Zahira Habibullah Sheikh v. State of Gujarat, in is a case that shows that intimidating witnesses through a threat of coercion and intimidation causes them to refuse to cooperate with the case.

This causes the integrity of the case to be destroyed. In 2025 and 2026, there have been court discussions on how intimidating witnesses is still a problem, although it is in serious crimes.

6.2. Family and Community Pressure: Women witnesses are also faced with the problem of being pressured to recant their statements by their own families or communities, as opposed to being pressured by someone outside of their families or communities.

6.3. Social Stigma and Victim Blaming: As is the case with all aspects of criminal justice, there is a prevalence of social stigma and victim blaming for women witnesses, especially in sexual offence cases. For instance, women witnesses are not supported because of a stigma against women's characters in society.

In **State of Punjab v. Gurmit Singh**¹², the court acknowledged the importance of maintaining a witness's dignity. The court emphasized the need for maintaining privacy and treating female witnesses with respect during trials.

6.4. Economic Dependency and Absence of Support: In most cases, women are economically dependent on their families or offenders, which creates a problem for women witnesses.

For example, a woman in a domestic violence case may not wish to come forward against her spouse because of economic dependency. In such a scenario, no amount of legal protection would be of use to her because of a lack of support.

6.5. Limitations of Relocation Measures: The Witness Protection Scheme allows for witnesses to be relocated, but women witnesses have not been able to utilize or have been unwilling to utilize such protection.

The relocation of a witness may have the following unforeseen consequences for a woman witness:

- Loss of income;
- Separation from children or family;
- Social stigma;
- Lack of access to any kind of social support.

For example, women in rural communities would find it very hard to adapt to a new place without the availability of social resources; therefore, relocating would not be feasible in many situations.

¹² 1996 SCC (2) 384

6.6. Recent Legal Developments and Ground Reality: As can be observed from the latest legal news and totality of all observations of the Supreme Court, witness intimidation remains a matter of great concern; and

- Courts are requiring provincial or territorial governments to make substantial improvements to their witness safety and protection systems.
- BNSS law implementation remains very weak.
- Notwithstanding the existence of witness protection programs, the Supreme Court has concerns regarding the continued intimidation of witnesses and their impact on the administration of justice.

The WPS primarily focuses on providing security to women in terms of their physical security; however, women need a much wider kind of support system than merely their physical security. Women need emotional, social, and economic support as well. The reality on the ground suggests that unless women receive support in terms of overcoming social stigma, family pressures, economic dependencies, and so on, the WPS for women would not be effective.

7. CRITICAL FEMINIST ANALYSIS:

The Witness Protection Scheme, 2018, can be analyzed from a critical feministic point of view. Analysis from a feministic point of view would be helpful in determining whether the Witness Protection Scheme, 2018, is actually addressing women's problems or whether there is an attempt to ensure that all witnesses are treated equally, irrespective of whether there is a consideration for the differences between genders or not.

7.1. Problems with 'Formal Equality': The Witness Protection Scheme, 2018, aims at providing all witnesses with 'Formal Equality' through its formal equality approach. In this regard, all witnesses are treated equally. Formal equality, though a fair approach, fails to take into consideration that women are confronted with a lot of problems, as opposed to men.

7.2. Not considering the patriarchal power structures of Indian Society: Indian Society is largely affected by patriarchal power structures. In some cases, this means that men are at a higher power than women in a family or in Society. This has a direct impact on a woman's freedom to raise her voice against something or someone without coercion.

In some cases, women witnesses are under coercion from their male family members.

7.3 Failure to Address Gender-Based Violence: The women witnesses in this scheme are associated with cases of violence based on their gender, such as rape, domestic violence, and harassment. These acts of violence not only cause physical injury but also mental trauma. The scheme is only concerned with their physical security and does not sufficiently address the acts of violence, which is why it does not create a supportive environment for women.

7.4 Women Depend on Others Economically: In general, women in this scheme are economically dependent on their families or sometimes even the perpetrator of domestic violence against them.

For example, in cases of domestic violence, women may not have the option to testify against their abusers or husband because they are economically dependent on them for support.

Additionally, the scheme does not sufficiently fund women to overcome this obstacle in order to testify against their abusers.

7.5 Reactive Not Preventative Approach: One of the biggest flaws in this scheme is that it is more reactive in nature. The scheme only provides security to women in cases of domestic violence after such a case is reported to the authorities.

IN real life this means that women need protection from the moment they reported the incident, as threats to their safety often commence soon after they file a complaint. A preventative approach would help ensure safety.

7.6 Procedural Not Transformational: The scheme is mainly focused on procedural aspects; e.g., police protection, concealment of identity and relocation. While these may be important components, they do not bring about any substantive change to the overall situation of women.

7.7 Gender Neutral Instead of Gender Sensitive: The design of the scheme is gender neutral, which means it makes no special provision for women who required additional support because of their individual circumstances. A gender sensitive approach would include the following types of services for women: -

- Counselling Services
- Safe Houses
- Protection from Family Pressure; therefore, the lack of these types of support limits the ability of this scheme to properly operate.

7.8 Lack of Psychological and Social Support: A major weakness of the Witness Protection Scheme 2018 is the absence of psychological counselling and rehabilitation support. Women witnesses typically suffer from trauma, anxiety and fear throughout the trial process. When women's mental and emotional health are not supported through proper counselling and rehabilitation, it becomes much more difficult for them to be able to continue with their testimony and provide honest testimony.

Overall, although the WPS 2018 provides for legal and physical protection, it does not account for the social/emotional/economic realities of women and therefore does not meet the purpose of the scheme; thus, from a feminist perspective, it needs to move away from a general approach to a more gender sensitive and practicable framework so that it provides real protection or support to female witnesses.

8 SUGGESTIONS AND REFORMS:

8.1 Develop an In-Depth Statutory Framework: The current WPS, 2018 functions based off of the **Mahender Chawla v. Union of India**¹³ case's ruling, but there is no definitive law formulating the WPS that has been passed by the Parliament of India; without this a full form of enforcement is prevented, and there may also be inconsistent implementations throughout the state. If there were a comprehensive statutory framework created for WPS it would:

- Provide legal clarity, statute/protocol defining the legal obligation of the agency or authority provided protection.
- Support a uniform application of the WPS throughout the country.
- Establish legal rights and duties for the authorities providing the protection

For example, many states have differing laws related to protection for victims of child abuse and sex assault, and therefore require different protections depending upon where you live. If there was a statutory law for WPS, then the protection protocols would have been enacted across the nation and a child living in a rural area would receive the same protections as children living in the city.

8.2 Introduce Gender-Specific Provisions: The current WPS has created statutes that are gender neutral and therefore fail to address the distinction between gender related vulnerabilities. Women are susceptible to unique vulnerabilities with respect to culture, family pressure, economic dependence, and stigma.

¹³ 2018 16 SCC 299

- Some gender specific statutes should include: Special or unique procedures for cases of rape and domestic violence
- Protection from threats created from family and community members
- Protecting the identity of the victim and their testimony.

Example: Honour-based killings are often perpetrated by family members and therefore a gender sensitive policy should create safe housing for victims and protected relocation from witnesses and family members of the accused to prevent further acts from family members.

8.3 Establish Witness Protection Authority: Currently, there is no single central or independent authority responsible for implementing witness protection. The implementation of witness protection varies from police department to police department and from local police departments to district authorities, resulting in inconsistencies in the delivery and timeliness of witness protection. A dedicated authority would:

- Conduct threat assessments in accordance with best practices and standards
- Monitor authority's compliance with the WPS
- Provide oversight of duty/obligation compliance of authority

Example: A female witness in a trafficking case may require protection for an extended period of time. A permanent authority exists to provide continuing monitoring and support, rather than providing police protection on a temporary basis.

8.4. Provide Psychological Counseling and Rehabilitation: Witness Protection is more than just providing a physical safe environment; it also involves providing a safe mental and emotional environment for witnesses who have experienced some trauma, especially for female witnesses.

Therefore, the witness protection program must include:

- Access to specialists trained as counselors or therapists.
- Long-Term rehabilitation programs
- Support in overcoming the mental and emotional stress caused by the trial, and for overcoming any stigma attached to the trial.

Example of the psychological counselling and rehabilitation of a witness would be that a rape survivor who is a witness will probably be subjected to numerous questioning during her testimony in court, thereby resulting in her being further traumatized. Psychological counselling will assist this witness with coping and, as a result of that assistance, will help her

to testify truthfully and confidently.

8.5. Provide Financial Assistance and Safe Housing: Many females who are witnesses to domestic violence or sexual assault rely on either their family members or the accused for their economic needs, thereby creating problems for them in obtaining protection or relocation.

Therefore, the financial and housing support must include:

- Monthly cash assistance;
- Access to safe housing or shelters;
- Employment and education support.

Example of the financial assistance and housing support of a witness would be that a female witness to domestic violence may fear testifying against her husband because of her financial reliance on him.

8.6. Improve Application and Mechanisms for Accountability: One of the largest disadvantages is the gap between law and application. Without application, even the best policies will not work.

The application of temporary housing and cash assistance must include:

- Periodic monitoring and audits of the office of witnesses to ensure that the witness assistance policies are being fulfilled;
- Agency officials must have clear responsibilities, and who will be held accountable;
- Agency personnel must be penalized if they have not performed their duties, or if they have been negligent;

A recent inquiry by the BNSS, 2023, has revealed that many state agencies, who have been empowered to enforce the witness protection program, are not enforcing the witness protection program. In certain cases, when police officers do not protect/testify due to valid threats/assurances being made against witnesses, there should be accountability/disciplinary action taken to ensure that failing to do so will not put witnesses in harm's way.

8.7. Encourage Adoption of Technology For Anonymity: Just like how technology will play a big role in protecting women's identity and safety, so too will it utilize techno-based solutions to protect the following:

- To conduct testimony with video conferences
- To utilize voice and face distortion so that the woman can testify from her home by

using video conferences

- To record evidence digitally
- To ensure sufficient data protection of the data if required

For example, one of the challenges a woman will face when testifying as a result of sexual assault, and wanting to do so is the fear of confronting the accused.

Therefore, by giving the woman a chance to testify by video conference from a secure location, it will help minimize the amount of fear she will experience when she wants to testify. This entire set of recommendations will help change the WPS from a legal measure into an actual measure of protection, especially for women.

To ensure that it is effective and serves its purpose, the WPS scheme will need to be implemented with a gender perspective, financing, and an institution it is accountable to.

9. CONCLUSION:

WPS 2018 has certainly helped move the Indian Criminal Justice System forward, as it gives a witness a chance to have their own protection and also ensures that justice is done to the individual in the system and not sacrificed for the fear of wrong prosecution (intimidation). Almost all those who have availed this scheme have come to realise that the WPS 2018 scheme has indeed helped them in giving their testimony to the Courts to a significant extent, although there are some limitations to the WPS 2018 from a gender perspective that can be identified.

Though the WPS is incorporated with a very structured framework, it also remains largely neutral in its application, with a lack of addressing the specific needs of women witnesses who have social stigmas associated with them with respect to being interrogative, as those who are accused or convicted have to go through long-term violence in their families, and there are a lot of resources binding the Criminal Justice System to allow for male oppression of female victims of male violence by virtue of women witness giving against male oppressors. Thus, most of the WPS is formal in nature and distributive in character for all cases, without addressing the specific needs for adequate protection to be provided to the witness against fear or intimidation by removing a witness care program or support person to protect the function of the Criminal Justice System.

A significant number of recent cases indicate that the courts are now much more aware of these loopholes and are making efforts to bridge the gaps by interpreting the laws in a more forward-

thinking fashion. However, this is still very much piecemeal in nature and depends on the judges who are hearing the particular cases.

This will require a radical shift in the laws as well as a shift in the social understanding, holding institutions accountable, and ensuring the financial support for the protection of witnesses. "Justice has to not only be done but has to also be seen to be done," and women will not be able to speak the truth without the fear of reprisals.

BIBLIOGRAPHY

➤ **Books :**

- i. V.N. Shukla, Constitution of India, Eastern Book Company.
- ii. K.D. Gaur, Textbook on Indian Penal Code, Universal Law Publishing.
- iii. Ratanlal & Dhirajlal, The Code of Criminal Procedure, LexisNexis.
- iv. Upendra Baxi, The Indian Supreme Court and Politics, Eastern Book Company.
- v. N.V. Paranjape, Criminology and Penology, Central Law Publications.

➤ **Journal Articles :**

- i. "Witness Protection as a Pillar of Fair Trial: An Indian Perspective", Indian Journal of Legal Research.
- ii. "A Study on Witness Protection Laws in India and USA", International Journal of Law and Legal Research.
- iii. "Role of Witness Protection Scheme in Criminal Justice System", Journal of Criminal Law Studies.
- iv. "Gender Justice and Witness Protection in India", Law and Society Review

➤ **Reports and Government Documents :**

- i. Law Commission of India, 198th Report on Witness Identity Protection and Witness Protection Programmes (2006).
- ii. Ministry of Home Affairs, Government of India, Witness Protection Scheme, 2018.
- iii. Bureau of Police Research and Development (BPR&D), Reports on Criminal Justice Reforms.
- iv. National Commission for Women (NCW), Reports on Violence against Women.

➤ **Case Laws :**

- i. Mahender Chawla v. Union of India
- ii. Zahira Habibullah Sheikh v. State of Gujarat
- iii. State of Punjab v. Gurmit Singh
- iv. Sakshi v. Union of India
- v. Swaran Singh v. State of Punjab
- vi. Delhi Domestic Working Women's Forum v. Union of India
- vii. Bodhisattwa Gautam v. Subhra Chakraborty
- viii. Nipun Saxena v. Union of India

➤ **Statutes and Legal Instruments**

- i. Constitution of India, 1950
- ii. Bharatiya Nagarik Suraksha Sanhita
- iii. Indian Evidence Act, 1872
- iv. Witness Protection Scheme, 2018

➤ **Online Sources**

- i. Drishti IAS – Articles on Witness Protection Scheme
- ii. SCC Online – Case Law Database
- iii. Live Law & Law Beat – Recent Legal News and Judgments
- iv. Ministry of Law and Justice – Official Notifications

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